

SECOND REGULAR SESSION

SENATE BILL NO. 1185

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR GROSS.

Read 1st time January 29, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

3663S.02I

AN ACT

To amend chapter 196, RSMo, by adding thereto one new section relating to civil liability for food consumption.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 196, RSMo, is amended by adding thereto one new section, to be known as section 196.185, to read as follows:

196.185. 1. This section shall be known and may be cited as the "Commonsense Food Consumption Act".

2. As used in this section, the following terms shall mean:

(1) "Claim", any claim by or on behalf of a natural person, as well as any derivative or other claim arising therefrom, asserted by or on behalf of any other person;

(2) "Generally known condition allegedly caused by or allegedly likely to result from long-term consumption", a condition generally known to result or to likely result from the cumulative effect of consumption, and not from a single instance of consumption;

(3) "Knowing and willful violation of federal or state law", conduct which constituted the violation was committed with the intent to deceive or injure consumers or with actual knowledge that such conduct was injurious to consumers, and the conduct was not required by regulations, orders, rules, or other pronouncement of, or any statute administered by, a federal, state, or local government agency;

(4) "Other person", any individual, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity, including any governmental entity or private attorney general.

3. Except as provided in subsection 4 of this section, a manufacturer, packer, distributor, carrier, holder, seller, marketer, or advertiser of a food, as

defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. 321(f)), but shall not include alcoholic beverages, or an association of one or more such entities, shall not be subject to civil liability arising under any law of the state of Missouri, including all statutes, regulations, rules, common law, public policies, court or administrative decisions or decrees, or other state action having the force and effect of law, for any claim arising out of weight gain, obesity, a health condition associated with weight gain or obesity.

4. Subsection 3 of this section shall not preclude civil liability where the claim of weight gain, obesity, health condition associated with weight gain or obesity, or other generally known condition allegedly caused by or allegedly likely to result from long-term consumption of food is based on:

(1) A material violation of an adulteration or misbranding requirement prescribed by statute or regulation of the state of Missouri or the United States of America, and the claimed injury was proximately caused by such violation; or

(2) Any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that such violation is knowing and willful, and the claimed injury was proximately caused by such violation. Subsection 3 of this section also shall not preclude civil liability for breach of express contract or express warranty in connection with the purchase of food.

5. In any action pursuant to subdivision (1) of subsection 4 of this section, the complaint initiating such action shall state with particularity the following: the statute, regulation, or other law of the state of Missouri or of the United States that was allegedly violated, the facts that are alleged to constitute a material violation of such statute or regulation, and the facts alleged to demonstrate that such violation proximately caused actual injury to the plaintiff. In any action exempted pursuant to subdivision (2) of subsection 4 of this section, in addition to the foregoing pleading requirements, the complaint initiating such action shall state with particularity facts sufficient to support a reasonable inference that the violation was with intent to deceive or injure consumers or with the actual knowledge that such violation was injurious to consumers. For purposes of applying this section, the foregoing pleading requirements are hereby deemed part of the substantive law of the state of Missouri and not merely in the nature of procedural provisions.

6. In any action exempted pursuant to subsection 4 of this section, all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence, resolve the motion to

dismiss, or to prevent undue prejudice to that party. During the pendency of any stay of discovery pursuant to this subsection, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilation, including electronically recorded or stored data, and tangible objects that are in the custody or control of such party and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the Missouri rules of civil procedure.

7. The provisions of this section shall apply to all covered claims pending on August 28, 2004, and all claims filed thereafter, regardless of when the claim arose.

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